

109TH CONGRESS  
1ST SESSION

# S. 542

To amend the Internal Revenue Code of 1986 to extend for 5 years the credit for electricity produced from certain renewable resources, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 7, 2005

Mr. DORGAN (for himself, Mr. SMITH, Mrs. MURRAY, Ms. CANTWELL, Mr. JOHNSON, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## A BILL

To amend the Internal Revenue Code of 1986 to extend for 5 years the credit for electricity produced from certain renewable resources, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. EXTENSION OF RENEWABLE ENERGY CREDIT.**

4 Section 45(d) of the Internal Revenue Code of 1986  
5 (relating to qualified facilities) is amended by striking  
6 “January 1, 2006” each place it appears and inserting  
7 “January 1, 2011”.

1 **SEC. 2. TREATMENT OF PERSONS NOT ABLE TO USE EN-**  
 2 **TIRE CREDIT.**

3 (a) IN GENERAL.—Section 45(e) of the Internal Rev-  
 4 enue Code of 1986 (relating to definitions and special  
 5 rules) is amended by adding at the end the following new  
 6 paragraph:

7 “(10) TREATMENT OF PERSONS NOT ABLE TO  
 8 USE ENTIRE CREDIT.—

9 “(A) ALLOWANCE OF CREDIT.—

10 “(i) IN GENERAL.—Except as other-  
 11 wise provided in this subsection—

12 “(I) any credit allowable under  
 13 subsection (a) with respect to a quali-  
 14 fied facility owned by a person de-  
 15 scribed in clause (ii) may be trans-  
 16 ferred or used as provided in this  
 17 paragraph, and

18 “(II) the determination as to  
 19 whether the credit is allowable shall  
 20 be made without regard to the tax-ex-  
 21 empt status of the person.

22 “(ii) PERSONS DESCRIBED.—A person  
 23 is described in this clause if the person  
 24 is—

1 “(I) an organization described in  
 2 section 501(c)(12)(C) and exempt  
 3 from tax under section 501(a),

4 “(II) an organization described  
 5 in section 1381(a)(2)(C),

6 “(III) a public utility (as defined  
 7 in section 136(c)(2)(B)), which is ex-  
 8 empt from income tax under this sub-  
 9 title,

10 “(IV) any State or political sub-  
 11 division thereof, the District of Co-  
 12 lumbia, any possession of the United  
 13 States, or any agency or instrumen-  
 14 tality of any of the foregoing, or

15 “(V) any Indian tribal govern-  
 16 ment (within the meaning of section  
 17 7871) or any agency or instrumen-  
 18 tality thereof.

19 “(B) TRANSFER OF CREDIT.—

20 “(i) IN GENERAL.—A person de-  
 21 scribed in subparagraph (A)(ii) may trans-  
 22 fer any credit to which subparagraph  
 23 (A)(i) applies through an assignment to  
 24 any other person not described in subpara-  
 25 graph (A)(ii). Such transfer may be re-

1 voked only with the consent of the Sec-  
 2 retary.

3 “(ii) REGULATIONS.—The Secretary  
 4 shall prescribe such regulations as nec-  
 5 essary to ensure that any credit described  
 6 in clause (i) is assigned once and not reas-  
 7 signed by such other person.

8 “(iii) TRANSFER PROCEEDS TREATED  
 9 AS ARISING FROM ESSENTIAL GOVERN-  
 10 MENT FUNCTION.—Any proceeds derived  
 11 by a person described in subclause (III),  
 12 (IV), or (V) of subparagraph (A)(ii) from  
 13 the transfer of any credit under clause (i)  
 14 shall be treated as arising from the exer-  
 15 cise of an essential government function.

16 “(C) USE OF CREDIT AS AN OFFSET.—  
 17 Notwithstanding any other provision of law, in  
 18 the case of a person described in subclause (I),  
 19 (II), or (V) of subparagraph (A)(ii), any credit  
 20 to which subparagraph (A)(i) applies may be  
 21 applied by such person, to the extent provided  
 22 by the Secretary of Agriculture, as a prepay-  
 23 ment of any loan, debt, or other obligation the  
 24 entity has incurred under subchapter I of chap-  
 25 ter 31 of title 7 of the Rural Electrification Act

1 of 1936 (7 U.S.C. 901 et seq.), as in effect on  
 2 the date of the enactment of the Energy Tax  
 3 Incentives Act.

4 “(D) CREDIT NOT INCOME.—Any transfer  
 5 under subparagraph (B) or use under subpara-  
 6 graph (C) of any credit to which subparagraph  
 7 (A)(i) applies shall not be treated as income for  
 8 purposes of section 501(c)(12).

9 “(E) TREATMENT OF UNRELATED PER-  
 10 SONS.—For purposes of subsection (a)(2)(B),  
 11 sales of electricity among and between persons  
 12 described in subparagraph (A)(ii) shall be treat-  
 13 ed as sales between unrelated parties.”.

14 (b) EFFECTIVE DATE.—The amendment made by  
 15 this section shall apply to shall apply to electricity pro-  
 16 duced and sold after the date of the enactment of this  
 17 Act, in taxable years ending after such date.

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